

AMENDED IN SENATE AUGUST 17, 2011

AMENDED IN SENATE JULY 1, 2011

AMENDED IN SENATE MAY 11, 2011

AMENDED IN SENATE APRIL 25, 2011

AMENDED IN SENATE MARCH 24, 2011

SENATE BILL

No. 921

Introduced by Senators Lieu and Correa

February 18, 2011

An act to add Article 2.5 (commencing with Section 150) to Chapter 2 of Part 1 of Division 2 of the Military and Veterans Code, relating to the Military Department, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 921, as amended, Lieu. Military Department: Office of the Inspector General.

Existing law establishes in state government the Military Department, which includes the office of the Adjutant General, the State Military Reserve, the California Cadet Corp, and the Naval Militia. There is also, within the Military Department, the Office of the State Military Department Inspector General. The State Military Department Inspector General inspects, audits, investigates, trains, and performs various duties necessary to support the mission of the Military Department.

This bill would require the State Military Department Inspector General to ~~be~~ *become* independent of the chain of command of the Military Department, *as specified*. This bill would require the Governor to appoint the inspector general, subject to Senate confirmation. This

bill would specify the duties of the State Military Department Inspector General, and would require the inspector general to ~~establish~~ *continue to maintain* a toll-free public telephone number to receive these complaints and allegations. This bill would also require that disciplinary action be brought against a state officer or employee who intentionally retaliates against a person who made a complaint or allegation of wrongdoing to the State Military Department Inspector General, as provided, and would specify that these officers and employees may be liable for civil damages for these same actions.

This bill would require the inspector general to *continue to* investigate specified complaints and allegations of misconduct upon written request of specified persons and would provide that those requests are not a public record under the California Public Records Act.

The California Constitution requires that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. The Legislature finds and declares both of the*
- 2 *following:*
- 3 *(a) That there currently exists, within the State Military*
- 4 *Department, an Inspector General, who inspects, audits,*
- 5 *investigates, trains, and performs various duties necessary to*
- 6 *support the mission of the Military Department.*
- 7 *(b) That it is not the intent of the Legislature, in enacting this*
- 8 *bill, to create a new Inspector General for the Military Department,*
- 9 *but to instead require that Inspector General, who is currently in*
- 10 *the chain of the command of the Military Department, to become*
- 11 *independent of that chain of command.*

1 ~~SECTION 1.~~

2 SEC. 2. Article 2.5 (commencing with Section 150) is added
3 to Chapter 2 of Part 1 of Division 2 of the Military and Veterans
4 Code, to read:

5
6 Article 2.5. State Military Department Inspector General
7

8 150. For purposes of this article, the following terms have the
9 following meanings:

10 (a) "Department" means the Military Department.

11 (b) "Office" means the Office of the State Military Department
12 Inspector General.

13 (c) "Inspector general" means the State Military Department
14 Inspector General.

15 150.10. (a) The inspector general ~~shall be independent of the~~
16 ~~chain of command of the Military Department.~~, *who is currently*
17 *in the chain of command of the Military Department, shall become*
18 *independent of that chain of command, and shall be appointed by*
19 *the Governor pursuant to subdivision (c).*

20 (b) The inspector general shall meet the same qualifications
21 established in this code for the Adjutant General.

22 (c) (1) The Governor shall appoint the inspector general, subject
23 to confirmation by the Senate.

24 (2) Upon confirmation by the Senate, the inspector general shall
25 serve at the discretion of the Governor.

26 (3) The inspector general shall serve on state active duty at the
27 grade of O-6.

28 150.11. (a) The department shall, from the amount annually
29 appropriated to it for purposes of this office, *continue to* fund the
30 position of inspector general and provide the office space and
31 support personnel requested by the inspector general.

32 (b) The inspector general shall have access to all employees
33 and documents of the department.

34 150.12. (a) The inspector general may receive communications
35 from any person, including, but not limited to, any member of the
36 California National Guard, the State Military Reserve, and the
37 Naval Militia.

38 (b) The inspector general ~~shall establish~~ *continue to maintain*
39 a toll-free public telephone number to receive the complaints and
40 allegations described in subdivision (a) of Section 150.13. The

1 inspector general shall post this telephone number in clear view
2 at every California National Guard armory, flight facility, airfield,
3 or installation.

4 150.13. (a) At the discretion of the inspector general or, upon
5 a written request by the Governor, a member of the California
6 Legislature, the Adjutant General, or any member of the public,
7 the inspector general shall *continue to* investigate any of the
8 following:

9 (1) Complaints that the Adjutant General or the Assistant
10 Adjutant General has engaged in discrimination or retaliation for
11 whistleblowing.

12 (2) Allegations of misconduct by the Adjutant General or the
13 Assistant Adjutant General.

14 (3) Allegations of misconduct by any member of the California
15 National Guard.

16 (b) If the inspector general conducts an investigation at the
17 request of a member of the California Legislature, the inspector
18 general shall submit to that member a report of his or her findings
19 of that investigation.

20 (c) (1) A request described in subdivision (a) is not a public
21 record and is not subject to disclosure under the California Public
22 Records Act set forth in Chapter 3.5 (commencing with Section
23 6250) of Division 7 of Title 1 of the Government Code.

24 (2) The inspector general shall not disclose to any person or
25 entity the identity of a person making a written request or an
26 allegation or complaint described in subdivision (a), unless the
27 person making the request, allegation, or complaint has consented
28 to the disclosure in writing.

29 (d) When deemed appropriate by the inspector general, the
30 inspector general shall refer to the federal Inspector General of the
31 Department of Defense any complaints and allegations pertaining
32 to violations of federal military laws or regulations.

33 150.14. (a) Any state officer or employee who intentionally
34 engages in acts of reprisal, retaliation, threats, coercion, or similar
35 acts against an employee of any state department, board, or
36 authority for having disclosed what the employee, in good faith,
37 believed to be a complaint or allegation described in subdivision
38 (a) of Section 150.13 shall be disciplined by adverse action as
39 provided in subdivision (a) of Section 19574 of the Government
40 Code. If no adverse action is instituted by the appointing power,

1 the State Personnel Board shall take adverse action against the
2 officer or employee in the same manner as provided in Section
3 19583.5 of the Government Code.

4 (b) In addition to all other causes of action, penalties, or other
5 remedies provided by law, any state officer or employee who
6 intentionally engages in acts of reprisal, retaliation, threats,
7 coercion, or similar acts against an employee for having disclosed
8 what the employee, in good faith, believed to be a complaint or
9 allegation described in subdivision (a) of Section 150.13 shall be
10 liable in an action for damages brought against him or her by the
11 injured party. Punitive damages may be awarded by the court if
12 the acts of the offending party are proven to be malicious. If
13 liability has been established, the injured party also shall be entitled
14 to reasonable attorney's fees as provided by law.

15 (c) For purposes of this section "state officer" includes, but is
16 not limited to, a member of the Military Department on state active
17 duty and any officer who holds a state commission or appointment
18 by the Governor.

19 ~~SEC. 2.~~

20 *SEC. 3.* The Legislature finds and declares that Section 2 of
21 this act, which adds Section 150.13 to the Military and Veterans
22 Code, imposes a limitation on the public's right of access to the
23 meetings of public bodies or the writings of public officials and
24 agencies within the meaning of Section 3 of Article I of the
25 California Constitution. Pursuant to that constitutional provision,
26 the Legislature makes the following findings to demonstrate the
27 interest protected by this limitation and the need for protecting
28 that interest:

29 In order to protect the confidentiality of those persons making
30 complaints or allegations, as authorized by this act, from any form
31 of retaliation for having made the complaint or allegation, it is in
32 the state's interest to limit public access to information.

33 ~~SEC. 3.~~

34 *SEC. 4.* This act is an urgency statute necessary for the
35 immediate preservation of the public peace, health, or safety within
36 the meaning of Article IV of the Constitution and shall go into
37 immediate effect. The facts constituting the necessity are:

38 In order to ensure that Military Department personnel who are
39 employed in state active duty, and thus are not under federal
40 military oversight, as well as those subject to the control of these

- 1 personnel, receive due process in the consideration of complaints
- 2 and appeals of disciplinary actions, it is necessary for this act to
- 3 take effect immediately.

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